

APPEAL NO. 041334  
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 2004. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant's (claimant) impairment rating (IR) is 61% and that the compensable injury extends to and includes vision loss, but does not include the diagnosed conditions of myopia, astigmatism, or keratoconus. The appellant/cross-respondent (carrier) appeals the IR determination and the determination that the compensable injury includes vision loss. The claimant responds to the carrier's appeal, urging affirmance of the determinations complained of by the carrier. The claimant conditionally appeals the determination that his compensable injury does not include the diagnosed conditions of myopia, astigmatism, or keratoconus. The appeal file contains no response from the carrier to the claimant's conditional appeal.

DECISION

Affirmed.

Extent of injury was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and it is for the hearing officer to resolve such conflicts and inconsistencies in the evidence as were present in this case (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's determination that the compensable injury extends to and includes vision loss, but does not include the diagnosed conditions of myopia, astigmatism, or keratoconus is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Section 408.125(e) provides that for injuries that occurred prior to June 17, 2001, where there is a dispute as to the IR, the report of the Texas Workers' Compensation Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. See *also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. If a doctor is unable to separate the impairment from the preexisting condition from the aggravating injury to the same part of the body, the IR is to be based on the present condition of that body part. See Texas Workers' Compensation Commission Appeal No. 94392, decided May

13, 1994. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza, *supra*. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this case, we are satisfied that the hearing officer's IR determination is sufficiently supported by the evidence. Accordingly, we cannot agree that the hearing officer erred in determining that the claimant's correct IR is 61%.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT  
221 WEST 6TH STREET, SUITE 300  
AUSTIN, TEXAS 78701-3403.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Edward Vilano  
Appeals Judge